very outset that the presence of the appellant at or near the scene of the crime was going to be the crucial question on which the jury would be required to give their verdict. It was elicited in cross-examination that neither Mohammed nor Bidah had disclosed in their statements to the police that they had seen the appellant at the scene. It was not clear from the record whether Ahmad, the neighbour, had reported to the police of having seen the appellant in the vicinity.

Before the close of the prosecution the court adjourned to view the *locus in quo*, where defence counsel explained that his object in requesting the view was to determine whether a person standing on the steps of the deceased's house was visible from a point marked 'X' in the sketch plan Ex. P.12. I now quote from the record what took place there:—

"Jurors then stood at a point 'X' and looked in the direction of the said steps. *On being questioned by the jurors through court, the accused indicated* the path taken by P.W.4 in taking P.W.2's daughter and his own to school, the path going in the direction of Putat Tujoh which passed in front of the deceased's house, and shown on Ex. P.12."

Eventually defence counsel submitted that the prosecution had failed to make out any case for the defence to answer and when the ruling was given against him the appellant elected to say nothing. Irreparable damage, of course, had already been done. The jury, who should not have been permitted to question the appellant on any account at that stage, had done so and obtained what in effect was an admission on the very issue which he was strenuously contesting. This was tantamount to calling on the defence in the middle of the prosecution case and the accused was not even given the option of saying nothing, as he had every right to do.

It matters not that the appellant was found not guilty on the charge of murder. He was still found guilty of the lesser offence under section 454 by the jury who could not have failed to bear in mind the appellant's statement during the view. It need hardly be pointed out that what happened was contrary to all established principles in a criminal trial — not a mere irregularity. The fact that defence counsel did not object cannot cure a mistake which must have inevitably prejudiced the appellant. Since the trial was thus vitiated we have no alternative but to quash the conviction and order a retrial.

In one respect, however, it must be pointed out that the trial was not a nullity. Although the learned trial judge omitted, perhaps by inadvertence, to enter an acquittal on the charge of murder — which he should have done — the jury's verdict in the appellant's favour must stand because he is clearly entitled to plead *autrefois acquit* hereafter. The retrial, therefore, will be on such other charge as the public prosecutor deems fit.

Appeal allowed.

TOH KUM SWEE v. ONG KING SENG

[O.C.J. (Chua J.) December 7, 1966]

[Singapore — Suit No. 1812 of 1965]

Practice and Procedure — Attachment — Attachment of defendant's equity of redemption in property — Property sold by mortgagees — Whether sale valid — Whether sheriff justified in not selling the attached equity of redemption — R.S.C. 1934, O.XLI, r. 7.

The plaintiff had obtained judgment against the defendant and had obtained an order attaching the defendant's interest in properties, which had been mortgaged to the Chung Khiaw Bank Ltd. The bank as mortgagees sold the properties by public auction. The plaintiff requested the sheriff to sell the defendant's interests in the properties, alleging that the sale by the bank was void under O. XLI, r. 7 of the Rules of the Supreme Court. The sheriff refused to do so on the ground that he had nothing to sell, unless he was indemnified. The plaintiff applied to the court for an order that the sheriff show cause why he did not sell the properties.

Held: on the facts of the case the sheriff held the view that he had nothing to sell, which view was not without merit and was justified in asking the plaintiff for an indemnity if the plaintiff wanted him to sell. The sheriff had, therefore, shown good cause why he did not sell the properties seized.

MOTION TO SHOW CAUSE.

K. S. Chung for the plaintiff.

Ho Thian Cheh (Sheriff) in person.

Cur. Adv. Vult.

Chua J.: This is a motion by the plaintiff, under Order XLIV rule 9 of the Rules of the Supreme Court, for an order that the Sheriff of Singapore do show cause why he did not sell the properties seized by him under a writ of seizure and sale.

In order to appreciate the position in which the sheriff found himself in, it is necessary to set out the events that took place, with some detail, before and after the writ of seizure and sale was issued. The events are these:

The defendant is the sole proprietor of S. K. Ong Rubber Estate. By an indenture of mortgage dated the 25th May, 1963, made between the defendant and the Chung Khiaw Bank, Ltd. the defendant mortgaged his properties No. 20 Cable Road, No. 100-D Hollywood Apartments and No. 106-B Hollywood Apartments, to the bank to secure the current account of S. K. Ong Rubber Estate up to a limit of $67,000 and interest thereon.

By clause 6(7) of the mortgage the mortgagee was expressly given the right to exercise his power of sale upon giving the mortgagor fourteen days notice to pay all the sums due

and upon the mortgagor failing to pay.

By a notice dated the 8th October, 1965, addressed to the defendant, the bank demanded the payment of $67,000 and interest and gave notice that unless the sum demanded was paid within 14 days of the service of the notice they would proceed to sell the mortgaged properties.

The defendant failed to pay the sums demanded within the period stated in the notice.

The plaintiff filed his Writ of Summons on the 1st November, 1965, claiming from the defendant the sum of $5,000 for money lent.

On the 24th December, 1965, the plaintiff obtained leave to sign judgment and on the 29th December, 1965, judgment in the sum of $5,000 and costs $203 was entered.

On the 29th December, 1965, a writ of seizure and sale was issued and on the 31st December, 1965, an order attaching the defendant's interest in the immovable properties No. 20 Cable Road, No. 100-D Hollywood Apartments and No. 106-B Hollywood Apartments was obtained and on the same day the said order was registered against these properties at the registry of deeds.

On the 3rd January, 1966, Chung & Co. acting for the plaintiff wrote to the bank's solicitors, R. C. H. Lim & Co., informing them of the judgment which had been obtained and the attachment of the properties and requesting that they be informed of the result of the auction sale as their client would be interested in the balance of the proceeds of sale.

The bank put up the mortgaged properties for sale by public auction on the 4th January. The properties were sold for $193,400.

On the 8th February Chung & Co. wrote to the sheriff informing him that the bank held a mortgagee sale on the 4th January, 1966, and requesting him to summon the manager of the bank to be examined under O. XLIII, r. 2 of the Rules of the Supreme Court. A garnishee summons under O. XLIII r. 2(1) dated the 16th February was served on the bank.

On the 9th February R. C. H. Lim & Co. wrote to Chung & Co. stating that the sale of the mortgaged properties was still pending and that as soon as the sale was completed they would submit a statement of account and would not part with the money without reference to Chung & Co.

On the 18th February R. C. H. Lim & Co. wrote to Chung & Co. informing them that the sum due to their clients totalled $387,837.02 and after appropriating the proceeds of sale there was still a further sum of $266,961.52 owing to their clients.

On the 18th February R. C. H. Lim & Co wrote to the sheriff undertaking to let the sheriff have payment of $60,243.36 as required under Suits Nos. 1811, 1812 and 1819 of 1965 as and when the sale of the properties was completed and proceeds had been received and requesting the sheriff to refrain from proceeding with the garnishee summons.

On the 21st February R. C. H. Lim & Co. wrote to Chung & Co. confirming the agreement to undertake to pay their costs and the sheriff's costs from the proceeds of sale.

On the 1st March R. C. H. Lim & Co. wrote to Chung & Co. stating that the interest of the mortgagor had been barred at the time the sheriff seized the properties and asked Chung & Co. to request the sheriff to release the properties immediately to enable them to complete the sale.

On the 9th March R. C. H. Lim & Co. again wrote to Chung & Co. requesting them to release the properties.

On the 12th March Chung & Co. replied that their clients were not prepared to consent to the release of the properties and warned that if the sale was completed without leave of the court under O. XLI r. 7 proceedings would be commenced to avoid it.

On the 14th March R. C. H. Lim & Co. wrote to Chung & Co. stating that as they had undertaken to pay the sheriff the sums required for the judgment debts as well as the legal costs for the same they would require Chung & Co. to release the said properties forthwith failing which they would hold them responsible for damages resulting from the delay in completion.

On the 16th March R. C. H. Lim & Co. in reply to the letter of Chung & Co. dated the 15th March stated that they could not pay nor undertake to pay to Chung & Co. the sums due under the judgments because of the garnishment notices.

On the 24th March Chung & Co. wrote to R. C. H. Lim & Co. stating that they were prepared to release the properties on the latter's undertaking to pay the amount of $750 as taxed costs and make payment to the sheriff of the balance after deducting the amount of $72,424.50.

On the 25th March R. C. H. Lim & Co. replied that they could not give the undertaking required and that they would proceed to complete the sale. They also withdrew and cancelled all previous undertakings.

On the 29th March Chung & Co. referred the sheriff to O. XLI r. 7 and asked him whether he intended to sell the properties under O. XLI r. 11.

On the 31st March Chung & Co. again wrote to the sheriff requesting an early sale since

R. C. H. Lim & Co. said they would complete the sale of the properties.

On the 7th April the sheriff wrote to R. C. H. Lim & Co. stating that by reason of O. XLI r. 7 the purported sale by the mortgagee was void as against the sheriff and the defendants.

On the 13th April R. C. H. Lim & Co. replied that they were of the opinion that the mortgagee had the right to sell the properties free from encumbrances and free from the three writs of seizure and sale registered against the properties and that they were of the view that the equity of redemption had been lost before the writs of seizure and sale were registered and therefore the writs of seizure and sale were redundant and did not affect the sale.

On the 21st April the sheriff wrote to Chung & Co. inquiring whether they were prepared to undertake to indemnify him in respect of any loss or damages that he might suffer as a result of acceding to their request. The sheriff also suggested a summons for directions.

In reply, on the 27th April, Chung & Co. stated that the properties should have been sold after two weeks from the 31st December, 1965 They also pointed out that the sheriff was under an obligation to sell the properties after seizure and they informed the sheriff that he was not entitled to indemnity.

On the 28th April Chung & Co. informed the sheriff that if he were to sell he would be selling subject to the mortgage.

No reply having been made by the sheriff, Chung & Co. on the 5th May again requested the sheriff to sell.

On the 28th May the sheriff replied stating *inter alia* as follows:—

> "You are, of course, aware by now that Mr. Richard Lim will be making an application for an order pertaining to the release of the immovable property attached, if you refuse to give consent in the manner specified in Form No. 49(a). I am of the view that it is advisable to await the outcome of the said application. In the meantime there is nothing that I can do for your client unless of course you insist that I proceed to sell the said equity of redemption."

On the 30th May Chung & Co. requested the sheriff to sell the equity of redemption.

On the 6th June Chung & Co. again wrote to the sheriff inquiring whether he was going to sell.

On 7th June Drew & Napier, acting for the purchasers of the properties, wrote to the sheriff stating that in their view the only interest seized by the sheriff, to wit the equity of redemption, was extinguished by the auction sale of the said properties and that what the mortgagor had left and was entitled to receive was only the surplus of the proceeds of sale.

On the 17th June Chung & Co. wrote to the sheriff stating that only a completed sale could destroy the equity of redemption. He reminded the sheriff that his refusal to sell the properties seized or the equity would cause damage to the plaintiff.

In reply, on the 20th June, the sheriff stated that he would only sell on getting a categorical undertaking from Chung & Co. that he would be indemnified in respect of any costs, loss or damages that he might be held to be liable directly or indirectly as a result of selling the properties.

In reply, on the 6th September, Chung & Co. stated that it was not part of a solicitor's duty to give an undertaking or an indemnity.

On the 8th September the sheriff in reply to Chung & Co.'s repeated requests for sale stated that as a result of the auction sale nothing remained that could be made the subject of a sale.

On the 9th September Chung & Co. requested the sheriff to give his reasons under O. XLIV r. 5 for his unwillingness or inability to sell.

On the 3rd October the sheriff wrote and informed Chung & Co. that the sale of No. 20 Cable Road was completed on the 9th September and that the sale of the two flats would be completed two weeks later.

On the 5th October Chung & Co. sent a reminder and on the 6th October, the sheriff replied that the sale by the mortgagee put an end to the only interest that was seized by the sheriff, to wit, the equity of redemption.

The plaintiff filed this motion on the 4th October.

So much for the facts.

The complaint of the plaintiff is that the sheriff has failed in his duty as he refused to enforce the execution. Counsel for the plaintiff submits that the writ of seizure and sale is regular and it gives the sheriff an absolute justification for all acts done under it and the sheriff is bound to execute it without question. Counsel says that the interest of the judgment debtor in the land described in the writ of seizure and sale was attached on the 31st December, 1965, and under the provisions of O. XLI r. 11(a) the sheriff should have taken steps to sell 14 days after that. He has asked the sheriff the reason why the sheriff has not obeyed the writ and the sheriff's answer was that all that was seized was the equity of redemption and even that was destroyed when the properties were sold by the mortgagee by public auction. Counsel says that he tried to convince the sheriff that the equity of redemption has not been destroyed and that the sale by the mortgagee was void under O. XLI r. 7 and asked him to sell but the sheriff refused

to do so unless he, the sheriff, was indemnified. Counsel submits that it is clear that the sheriff is unwilling to sell.

Counsel for the plaintiff addressed the court at length on the question whether the equity of redemption has been destroyed or not. His argument is shortly this. It is true that the mortgagee has sold the properties of the defendant by public auction but until the sale is completed by conveyance the equity of redemption has not been destroyed but only suspended and the sheriff should have sold the equity of redemption when he was requested to do so by the plaintiff. In any case the sheriff should have sold the properties subject to the mortgage as the sale by the mortgagee is void as against the sheriff under O. XLI r. 7.

Now what does the sheriff say? The contention of the sheriff is that what was seized by him which belonged to the judgment debtor was the equity of redemption. He submits that on the English authorities cited by him the equity of redemption came to an end on the day the property was sold by auction, that is when the contract of sale was entered into. He further submits that there was no alienation of the property seized within the meaning of O. XLI r. 7. The property seized, he says, was the equity of redemption and the equity of redemption was not alienated. What happened was that the mortgagee sold the legal estate which was vested in him and the equity of redemption just came to an end. In any case, says the sheriff, O. XLI r. 7 covers only alienation at the instance of the judgment debtor himself and has no application where the mortgagee is relying on his statutory power of sale. The sheriff points out that the property was attached on the 31st December, 1965, and any sale by him could only take place after the 14th January, 1966, but by that time the sale by the mortgagee had already taken place on the 4th January, 1966. The sheriff submits that for those reasons he has nothing to sell.

It is not for me in this application to interpret O. XLI r. 7. I am only to consider whether the sheriff has shown cause. As counsel for the plaintiff says the purpose of his application is not to ask the court to adjudicate on the rights of the judgment debtor nor the rights of the vendor and purchaser at the auction sale, but to ask the sheriff the reasons for his inability or unwillingness to sell.

As I have said the complaint of the plaintiff is that the sheriff refused to sell but in the events that had happened, which the plaintiff was fully aware of, can one really blame the sheriff? It is apparent that before March, 1966, the plaintiff did not expect the sheriff to sell. The plaintiff knew in January, 1966, that the mortgagee was going to sell the properties by auction on 4th January and he raised no objection although he gave notice to the mortgagee of the judgment and the attachment. The plaintiff and the sheriff were led to believe by the mortgagee that the mortgagee was going to pay to the sheriff $60,243.36. In March, 1966, the mortgagee had a change of heart and said that he was not going to pay and that was as a result of the plaintiff refusing to release the properties to enable the mortgagee to complete the sale.

It was after this, on the 29th March, that the plaintiff wrote to the sheriff asking the sheriff whether the latter was aware that under O. XLI r. 7 the sale by the mortgagee was void as against the sheriff and thereafter insisted that the sheriff should sell. The sheriff found himself in a dilemma. What was he to do? He drew the attention of the mortgagee to the plaintiff's letter of the 29th March and to O. XLI r. 7. The mortgagee maintained that the equity of redemption had been destroyed even before the writ of execution was issued. Correspondence passed between plaintiff's solicitors and the sheriff and the mortgagee's solicitors on the question. After careful consideration of the matter the sheriff came to the conclusion that he could not sell without opening himself to a claim for damages so he asked the plaintiff to indemnify. It seems to me that the sheriff holding the view that he has nothing to sell, a view which I must say is not without merit, is quite justified in asking the plaintiff for an indemnity if the plaintiff wants him to sell. As the sheriff said he could not do things blindly without considering the full implications of his act.

It seems to me that instead of insisting that the sheriff should sell the plaintiff should take steps to set aside the mortgagee's sale if he is convinced that the sale of the mortgagee is void under O. XLI r. 7.

In my view the sheriff has shown good cause why he did not sell the properties seized.

Cause shown.

Solicitors: *Chung & Co.*

CHIEF ASSESSOR, PROPERTY TAX v. TOWN AND CITY PROPERTIES LTD.

[O.C.J. (Winslow J.) December 9, 1966]

[Singapore — District Court Appeal No. 5 of 1966]

Property Tax — Company owning all shares in subsidiary companies — Subsidiary companies owners of land — Notice of assessment should have been sent to subsidiary companies — Assessment of land on which buildings are in course of erection — Revision of annual value — Capital value of properties certified in prospectus — Meaning of annual value — Property Tax Ordinance, 1960, s. 17(2).

In this case the chief assessor appealed against the decision of the Valuation Review Board which was to the effect that certain properties could not be assessed to property tax under the provisions of section 17(2) of the